

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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CLERK

BY Law
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Case No. 2:20-cv-189

Magistrate Judge:

**VERIFIED PETITION FOR
JUDICIAL REVIEW**

ARMTECH SALES & SERVICE, LLC)
d/b/a NORTH STAR GUNS)
Petitioner,)
v.)
NICHOLAS O'LEARY)
Director of Industry Operations)
Bureau of Alcohol Tobacco)
Firearms and Explosives,)
Respondent.)

PETITION FOR JUDICIAL REVIEW

NOW COMES the Petitioner, Armtech Sales & Service, LLC d/b/a North Star Guns, by and through counsel, Robert J. Kaplan and KAPLAN AND KAPLAN and for its Petition for Judicial Review of Respondent's September 17, 2020 Final Notice of Denial of Application, Revocation, Suspension and/or Fine of Firearms License, states as follows:

1. This is a Petition for *de novo* judicial review of the revocation of a federal license as a dealer in firearms other than destructive devices, and this action is being timely brought pursuant to 18 U.S.C. 923(f)(3) and its related regulations.

PARTIES

2. Armtech Sales & Service, LLC is a limited liability company doing business under trade name North Star Guns with its principal place of business in Richmond, Vermont (herein "Northstar Guns"). North Star Guns has been for many years a federally licensed firearms dealer who engaged in the business of firearm sales.

KAPLAN KAPLAN
ATTORNEYS AT LAW

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3. Respondent, Nicholas O'Leary (herein "DIO") is the Director of Industry Operations of the Boston Field Division of the Bureau of Alcohol Tobacco Firearms and Explosives ("ATF"). North Star Guns operates its business within the jurisdiction of the Boston Field Division and DIO O'Leary.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331, as it arises under the Constitution and laws of the United States, specifically 18 U.S.C. 923(f)(3), *et seq.*, and its related regulations.

5. Venue is proper in the District of Vermont as North Star Guns' principal place of business is located within the district in Richmond, Vermont.

FACTS

6. A Notice to Revoke of Revocation of Federal Firearms License dated January 21, 2020 was sent by ATF notifying North Star Guns that its federal license as a dealer in firearms ("FFL") was being revoked.

7. North Star Guns timely requested an administrative hearing with respect to the revocation of its FFL pursuant to 18 U.S.C.923(f)(2), and a hearing was held on August 28, 2020 by written submissions.

8. North Star Guns received a Final Notice of Revocation of Firearms License from DIO O'Leary (the "Final Notice"), issued September 17, 2020. The Final Notice revoked North Star Guns FFL effective October 9, 2020, later extended to December 10, 2020 by agreement.

9. The Final Notice sets forth certain purported findings of fact and conclusions of law regarding DIO O'Leary's revocation of North Star Guns FFL with respect to, among other

things, alleged violations of the Gun Control Act and whether such alleged violations were committed by North Star Guns willfully.

COUNT I
Multiple Handgun Sales

10. Paragraphs 1-9 are incorporated as if restated in full herein.
11. In the Final Notice, DIO O'Leary found that North Star Guns willfully violated 18 U.S.C. 923(g)(3)(A) and 27 C.F.R. 478.126(a) on one occasion by failing to timely and accurately report the sale or other disposition of two or more handguns to an unlicensed person.
12. North Star Guns did not willfully violate 18 U.S.C. 923(g)(3)(A) and 27 C.F.R. 478.126(a), because to the extent that any violations occurred, they were inadvertent, not intentional, and did not occur in deliberate disregard for and/or in plain indifference to a known legal obligation. Moreover, North Star Guns has procedures in place to avoid such violations, and the overwhelming majority of such transfers were in full compliance with the law.

COUNT II
A & D Record

13. Paragraphs 1-9 are incorporated as if restated in full herein.
14. In the Final Notice, DIO O'Leary found that North Star Guns willfully violated 18 U.S.C. 923(g)(1)(A) and 27 C.F.R. 478.126(e) on multiple occasions by failing to timely and accurately record the disposition of firearms.
15. North Star Guns did not willfully violate 923(g)(1)(A) and 27 C.F.R. 478.125(e), because to the extent that any violations occurred, they were inadvertent, not intentional, and did not occur in deliberate disregard for and/or in plain indifference to a known legal obligation. Moreover, North Star Guns has procedures in place to avoid such violations and the

overwhelming majority of such transfers were in full compliance with the law.

COUNT III
NICS Check

16. Paragraphs 1-9 are incorporated as if restated in full herein.
17. In the Final Notice, DIO O'Leary found that North Star Guns willfully violated 18 U.S.C. § 922(t)(1)(a) and 27 C.F.R. § 478.102(a) for failure to conduct a NICS background check prior to transferring a firearm.
18. North Star Guns did not wilfully violate 18 U.S.C. § 922(t)(1)(a) and 27 C.F.R. § 478.102(a) because to the extent that any violations occurred, they were inadvertent, not intentional, and did not occur in deliberate disregard for and/or in plain indifferent to a known legal obligation. Moreover, North Star Guns has procedures in place to avoid such violations, and the overwhelming majority of such transfers were in full compliance with the law.

COUNT IV
ATF Form 4473 - Record Keeping Discrepancies

19. Paragraphs 1-9 are incorporated as if restated in full herein.
20. In the Final Notice, DIO O'Leary found that North Star Guns willfully violated a number of record keeping provisions related to the ATF Form 4473 as follows:
 - A. Failure to properly record data related to transfer in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. 478.21(a).
 - B. Failure to obtain a properly completed ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1).
 - C. Failure to record complete proper identification of the transferee in violation of 18 U.S.C. § 923(g)(1)(a) and 27 C.F.R. § 478.124(c)(3)(i).

- D. Failure to record complete NICS information on ATF Form 4473 in violation of 18 U.S.C. §923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv).
- E. Failure to record complete and accurate firearm information on ATF Form 4473 in violation of 18 U.S.C. §923(g)(1)(a) and 27 C.F.R. § 478.124(c)(4).
- F. Failure to complete box 34 and box 36 on ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. §4781.124(c)(5).

21. North Star Guns did not willfully violate the above referenced provisions because to the extent that any violations occurred, they were inadvertent, not intentional, and did not occur in deliberate disregard for and/or in plain indifference to a known legal obligation. Moreover, North Star Guns has procedures in place to avoid such violations, and the overwhelming majority of such transfers were in full compliance with the law.

COUNT V
Equal Access to Justice Act

- 22. Paragraphs 1-9 are incorporated as if restated in full herein.
- 23. Under 28 U.S. Code § 2412, North Star Guns seeks recovery of reasonable costs and attorney fees associated with bringing this action.

COUNT VI
Injunctive Relief

- 24. Paragraphs 1-9 are incorporated as if restated in full herein.
- 25. North Star Guns is entitled to injunctive relief in the form of a temporary restraining order and preliminary injunction.
- 26. Respondent's enforcement of the revocation of North Star Guns, FFL absent

injunctive relief, will result in immediate and irreparable injury to the business to the extent that North Star Guns will be forced out of business. Specifically, North Star Guns' operations will be damaged such that whether it regains its FFL at the conclusion of the case at that point simply will not matter and success on the merits of this case will be an empty victory.

27. The issuance of requested injunctive relief will not cause undue harm, substantial inconvenience or loss to Respondent, and on balance, whatever inconvenience that may be caused to Respondent is substantially less than the actual injury to North Star Guns.

28. The public will not be adversely affected by the issuance of the TRO and preliminary injunction, and in fact, the public's interest will be protected by such; and

29. North Star Guns can demonstrate a probability of success on the merits, or alternatively, serious questions going to the merits, such that the balance of hardship sharply favors the protection of its interests by the issuance of a TRO and ultimately a preliminary injunction.

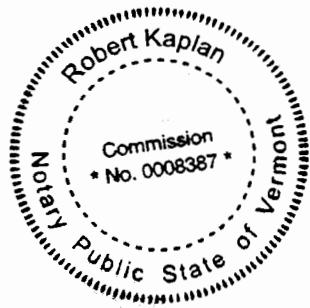
WHEREFORE, North Star Guns respectfully requests that this Honorable Court enter judgment in its favor and against DIO O'Leary, declare that sufficient grounds for revoking North Star Guns' FFL do not exist, order that the Final Notice is rescinded and that North Star Guns FFL is reinstated, award costs and reasonable attorney fees, and award any further relief deemed just and appropriate.

DATED at Burlington, Vermont, this 17th day of November 2020.

Respectfully Submitted,

ARMTECH SALES & SERVICE, LLC d/b/a
NORTH STAR GUNS

By Counsel



KAPLAN AND KAPLAN

By: _____
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VERIFICATION

I, William Weiner, sole member of Armtech Sales & Service, LLC d/b/a North Star Guns, verify under the pains and penalties aware of the facts regarding this matter, and that the facts set forth in the foregoing Verified Petition for Judicial Review are true and correct to the best of my knowledge, information, and belief.

William Weiner, Member
Armtech Sales & Service, LLC
d/b/a North Star Guns

State of Vermont)
)
)ss:
County of Chittenden)

On this 16th day of November, 2020, before me personally appeared William Weiner to me known to be the person who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same to be his free act and deed.

Notary Public Signature
My Commission Expires: 1/31/2021